



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
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Third District, Long Beach

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Fourth District, Los Angeles

STEVE WESTLY
State Controller, Sacramento

RAMON J. HIRSIG
Executive Director

**STATE BOARD OF EQUALIZATION MEETING
450 N Street, Sacramento
November 20–21, 2006
NOTICE AND AGENDA**

Monday, November 20, 2006

Board Committee Meetings convene at 9:30 a.m.*

Board Meeting convenes upon adjournment of the Board Committee Meetings.**

Agenda items occur in the order in which they appear on the agenda. When circumstances warrant, the Board's Chair, Mr. Chiang, may modify the order of the items on the agenda.

BOARD COMMITTEE MEETINGS

LEGISLATIVE COMMITTEE – Room 122 Ms. Yee, Committee Chair

Suggestions for Property Taxes and Business Taxes (Sales and Use Taxes, and Special Taxes) legislation to be sponsored by the Board in the first year of the 2007-2008 Legislative Session. Additional suggestions will be included on the agenda for December 2006.

- **2007 Legislative Proposals—Property Taxes**
 - Amend Section 63.1 of the Revenue and Taxation Code to clarify that a property need only be eligible for the homeowners' exemption, and not actually receiving the exemption, to qualify for the change in ownership exclusion for principal residences between parents and children.
- **2007 Legislative Proposals—Business Taxes (Sales and Use Taxes)**
 - Amend Section 6405 of the Revenue and Taxation Code to increase the use tax exemption for the amount of tangible personal property purchased in a foreign country and personally hand-carried into this state from \$400 to \$800 to conform to changes in the federal duty-free exemption.
 - Amend Section 6478 of the Sales and Use Tax Law and Section 7659.7 of the Motor Vehicle Fuel Tax Law to provide appeal rights to taxpayers who have been assessed a 10 percent penalty for failure to make a prepayment in accordance with the law and that failure is due to negligence or intentional disregard for the law.

- Amend Section 7211 of the Bradley-Burns Uniform Sales and Use Tax Law to clarify that the Board of Equalization shall continue to enforce the Bradley-Burns ordinance of any city or city and county that levies a tax administered by the Board under the Transactions and Use Tax Law.
 - Amend Section 7252, and delete Sections 7252.5 through 7252.30 of the Transactions and Use Tax Law to simplify the definition of “districts.”
 - Add Section 7269 to the Transactions and Use Tax Law to provide for a limitation on redistributions of transactions and use taxes.
- **2007 Legislative Proposals—Business Taxes (Special Taxes)**
- Amend Section 30187 of the Revenue and Taxation Code to change the return due date for consumers owing excise taxes on purchases from out-of-state cigarette sellers to be consistent with the due date of their use tax liability.
 - Amend Section 30182 of the Revenue and Taxation Code to change the due date of the monthly report filed by cigarette distributors who pay on a twice-monthly basis to the same report due date of cigarette distributors paying on a monthly basis.
 - Amend Sections 9304 and 60653 of the Revenue and Taxation Code to delete the word “license” from the Use Fuel Tax Law and the Diesel Fuel Tax Law, respectively, to correct the wording change in the name of the Motor Vehicle Fuel Tax Law.

BUSINESS TAXES COMMITTEE – Room 121 Mr. Chiang, Committee Chair

1. Proposed revisions to Regulation 1603, *Taxable Sales of Food Products*, regarding the application of tax to charges for mandatory and optional gratuities.
(Continued from the September 27, 2006 Committee meeting)
2. Proposed new Regulation 1671.1, *Discounts, Coupons, Rebates, and Other Incentives*, to clarify the application of tax to third party rebates.

BOARD MEETING – Room 121

ORAL HEARINGS

A. HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE HEARINGS

There are no items for this matter.

B. CORPORATE FRANCHISE AND PERSONAL INCOME TAX HEARINGS

(Contribution Disclosure forms required pursuant to Govt. Code § 15626.)

- B1. Gina L. Tenorio, 343022
 For Appellant: Gina Tenorio, Taxpayer
 Jesse Torres, Witness
 For Franchise Tax Board: Joann Nguyen, Intern
 Jane Perez, Tax Counsel

- B2. Edward Freidberg and Traci Reynolds, 340178
For Appellant: Edward Freidberg, Taxpayer
For Franchise Tax Board: Craig Scott, Tax Counsel
- B3. Roby L. Matheny, 342460
For Appellant: Frank Finelli, Enrolled Agent
For Franchise Tax Board: Craig Scott, Tax Counsel
- B4. Granite Construction, Inc., 301578
For Appellant: David Grazian, Taxpayer
Bob Uehling, Taxpayer
Marty Dakessian, Attorney
Joseph Vinatieri, Attorney
For Franchise Tax Board: Craig Scott, Tax Counsel
- B5. Albert F. Ojeda, 336543
For Appellant: Albert F. Ojeda, Taxpayer
For Franchise Tax Board: Jane Perez, Tax Counsel

C. SALES AND USE TAX APPEALS HEARINGS

(Contribution Disclosure forms required pursuant to Govt. Code § 15626.)

- C1. Susan A. Hendrickson-Castro, 283845 (UT)
For Petitioner: Sue Castro, Taxpayer
Gary Castro, Representative
For Department: Carla Caruso, Tax Counsel
- ~~C2. Sierra Railroad Company, 287920, 288213 (JHF)~~
~~For Petitioner: Michael Hart, Taxpayer~~
~~Lori Mersereau, Attorney~~
~~Torgny Nilsson, Representative~~
~~For Department: Cary Huxsoll, Tax Counsel~~
- C3. Richard Charles Walton, 310562 (GH)
For Petitioner: Richard Charles Walton, Taxpayer
For Department: Robert Stipe, Tax Counsel
- C4. R.E.M. Concepts, Inc., 332323 (EH)
For Petitioner: Joseph A. Vinatieri, Attorney
Whitey Hegwer, Witness
Ellen Hegwer, Witness
Dave Rennie, Witness
For Department: Sharon Jarvis, Tax Counsel

G. TAX PROGRAM NONAPPEARANCE MATTERS – CONSENT(Contribution Disclosure forms not required pursuant to Govt. Code § 15626.)**G1 Legal Appeals MattersMr. Levine**

- Hearing Notice Sent – No Response
 1. Sherry Crystal Tejeda and Prospero Olmos Tejeda, 313099 (GH)
- Hearing Notice Sent – Appearance Waived
 2. Cal U-Rent, Inc., 299190 (MT)
- Petitions for Release of Seized Property
 3. Long Thanh Nguyen, 362002 (ET)
 4. Thuy Thi Hong Nguyen, 362341 (ET)

G2 Franchise and Income Tax Matters..... Mr. Schreiter

- Decisions
 1. Affiliated Funding Corporation, 317945
 2. Robert Andrea, 283173
 3. John Buerger, 300340
 4. Scott C. Conway, 340161
 5. Estate of Rosemarie K. Hoyer (Deceased), 335773
 6. ICI Americas, Inc., 312753
 7. Michael E. Leighton, 336609
 8. Cherie Nickell, 333432
 9. Point Arguello Pipeline Company, 340943
Point Arguello Terminal Company, 340944
Point Arguello Natural Gas Line, 340945
 10. Rowena H. Robinson, 341902
 11. Donnie Schroeder, 332676
 12. Susan Smilow, 342152
- Petitions for Rehearing
 13. Michael Baldigo, 296867
 14. Robert P. Anderson, et al., 313978
Stephen R. Fake, et al., 314025
Dan M. Lusky, et al., 313988
 15. Dante S. Detorres, 318123
 16. Christopher Gyorgy, 282946
 17. Tuan Q. Nguyen and Jacqueline Hoang, 306870
 18. Warren D. Ward, 260981
 19. Charles West, 316395

G3 Homeowner and Renter Property Tax**Assistance Matters..... Mr. Schreiter**

- Decisions
 1. Sandra H. Allison, 345650
 2. Deborah Darden-Williams, 339300
 3. Philip D. Janney, 347044
 4. Clarence Hansen, 318281

G4 Sales and Use Taxes Matters Ms. Henry

- Redeterminations
 1. LSI Logic Corporation, 334199 (GH)
 2. Whitehall Jewellers, Inc., 300394 (OHA)
 3. Siemens Dematic Corporation, 311600 (OHA)
 4. Impath, Inc., 256022 (OHB)
 5. Alpha Beta Company, 333929 (AA)
 6. Mehrnoush Kamran, 195693 (AS)
 7. Sandroni Rey, LLC, 259347 (AS)
- Relief of Penalty/Interest
 8. Office Club, Inc., 372808 (OHC)
 9. Tuesday Morning, Inc., 360670 (OHC)
 10. Becton Dickinson & Company, 336172 (OHB)
 11. VWR International, Inc., 372533 (OHB)
 12. Pape' Material Handling, Inc., 372530 (OH)
 13. Sully-Miller Contracting Company, 372534 (EA)
 14. Tiffany & Company, 372531 (OHB)
 15. Cabi, LLC, 360669 (AA)
- Denials of Claims for Refund
 16. Food 4 Less of California, Inc., 331833 (AA)
 17. Cardinal Health 109, Inc., 315664 (OHA)
 18. Alpha Beta Company, 373351 (AA)
 19. Hughes Markets, Inc., 331832 (AA)
 20. Bay Area Warehouse Stores, Inc., 331825 (CH)
 21. Schawk Holdings, Inc., 360272 (AA)
- Denials of Relief of Penalty/Interest
 22. Howmedica Osteonics Corporation, 336745 (OHB)

G5 Sales and Use Taxes Matters – Credits, Cancellations, and Refunds..... Ms. Henry

- Credits and Cancellations
 1. Shelby Williams Industries, Inc., 361463, (OHA)
 2. Corbell Products, Inc., 372688 (EH)
 3. Maximiliano A. Zamora, 362740 (AS)
- Refunds
 4. Kawasaki Motors Corporation USA, 367215 (EAA)
 5. Tekelec, Inc., 332529 (AC)
 6. LBS Financial Credit Union, 234485 (EA)
 7. San Pedro Peninsula Hospital, 372895 (EAB)
 8. Color Service, Inc., 262552 (AA)
 9. Target Corporation, 359622 (OHA)
 10. Advanced Cardiovascular System, Inc., 361440 (GH)
 11. LSI Logic Corporation, 312754 (GH)
 12. Westamerica Bank, 239271 (JH)
 13. The Golden 1 Credit Union, 356929 (KH)
 14. R.A.Pearson Company, 356853 (OH)
 15. Baker Process, Inc., 328884 (OHC)
 16. Fort James Operating Company, 307417 (OHC)

17. Colorado Prime Corporation, 261574 (OHB)
18. Ford Motor Company, 362187 (OHA)
19. Mercedes-Benz USA, LLC, 354875 (KH)
20. Election Systems & Software, Inc., 326202 (OHA)
21. Connell Nissan, 328562 (EAA)
22. Althea Technologies, Inc., 360312 (FH)
23. ELC Beauty, LLC, 359832 (OHB)
24. Mc-Donnell Douglas Corporation, 333016 (OHA)
25. Alpha Beta Company, 331824 (AA)
26. BCI Coca-Cola Bottling Co, L.A., 311112 (CH)
27. BCI Coca-Cola Bottling Co, L.A., 311946 (AA)
28. Fidelity Information Services, Inc., 355543 (OHC)
29. Schawk Holdings, Inc., 333035 (AA)
30. Lobel Financial Corporation, 360043 (EA)
31. United Auto Credit Corporation, 360018 (EAA)
32. A-L Financial Corporation, 362787 (EA)
33. S.M.H.E., 345179 (AP)
34. Cal State 9 Credit Union, 295062 (CH)
35. Pacific Oaks Federal Credit Union, 358032 (AR)
36. Southern Western FCU, 367217 (EA)

G6 Special Taxes Matters Mr. Gau

- Redetermination
 1. William Dwayne Robertson, 287750 (ET)
- Relief of Penalty
 2. Clarendon National Insurance Company, 360030 (ET) – “CF”
 3. Minnesota Mutual Life Insurance Company, 359123 (ET) – “CF”

G7 Special Taxes Matters – Credits, Cancellations, and Refunds Mr. Gau

- Refunds
 1. Mohammed M. Rahman, 355642 (MT)
 2. Jetro Lov, Inc., 342015 (ET)
 - ~~3. Aetna Life Insurance Company, 367182 (ET) – “CF”~~
 4. Parker Hannifin Corporation, 373761 (EF)

G8 Property Tax Matters Mr. Gau

- Petition for Reassessment of Private Railroad Car Tax
 1. Union Tank Car Company, 361876 – “CF”

G9 Cigarette License Fee Matters

There are no items for this matter.

G10 Legal Appeals Property Tax Matters Mr. Ambrose

- Petitions-Penalty Abatement on Unitary Value
 1. ACI Communications Holdings, Inc. (8022), 357204– “CF”
 2. Asia Talk Telecom, Inc. (8007), 360224– “CF”
- Petition for Reassessment of Unitary Value
 3. Pacific Gas & Electric Company (0135), 359205– “CF”

- Petitions-Reassessment/Penalty Abatement on Unitary Value
 4. Public Communications Services (7811), 358547– “CF”
 5. Locus Telecommunications, Inc. (8017), 359198– “CF”

H. TAX PROGRAM NONAPPEARANCE MATTERS – ADJUDICATORY
(Contribution Disclosure forms required pursuant to Govt. Code § 15626.)

H1 Legal Appeals MattersMr. Levine

- Cases Heard But Not Decided
 1. California Automobile Ins. Company, 127684, 139404 (ET) – “CF”
 2. Orna Amzaleg, Asher Fadlon and Isack Fadlon, 171769 (AS)

H2 Franchise and Income Tax Matters Mr. Schreiter

- Opinions
 1. Apple Computer, Inc., 152016
 - ~~2. Deluxe Corporation, 297128~~
- Decisions
 3. Alpine Electronics of America, Inc., 281865
 4. Paul L. Casanova and Barbara Joan Casanova, 289775
 5. Del Dietrich, 268788
 6. Monica E. Ridley (Formerly Monica E. Esparza), 341520
- Petition for Rehearing
 - ~~7. Argonaut Group, Inc., 287738~~

There are no items for the following matters:

- H3 Homeowner and Renter Property Tax Assistance Matters
H4 Sales and Use Taxes Matters

H5 Sales and Use Taxes Matters – Credits, Cancellations, and Refunds Ms. Henry

- Refunds
 1. Long Beach Acceptance Corporation (EA)., 198737
 2. Eagle Community Credit Union (EAA), 374923

H6 Special Taxes Matters

There are no items for this matter.

H7 Special Taxes Matters – Credits, Cancellations, and Refunds Mr. Gau

- Refund
 1. Argonaut-Southwest Insurance Company (ET), 264564 – “CF”

There are no items for the following matters:

- H8 Property Tax Matters
H9 Cigarette License Fee Matters
H10 Legal Appeals Property Tax Matters

I. TAX PROGRAM NONAPPEARANCE MATTERS(Contribution Disclosure forms not required pursuant to Govt. Code § 15626.)**I1 Property Taxes Matters Mr. Gau**

- Audits
 1. Mountain Utilities (185) – “CF”
 2. OmniPoint Communications, Inc., (2748) – “CF”
- Board Roll Changes
 3. 1999 State-Assessed Property Roll – “CF”

I2 Offers-in-Compromise Recommendations Ms. Ogrod

1. Edith Sinclair
2. Rebecca Shuster

BOARD MEETING RECONVENES AT 1:30 p.m. – Room 121**C. SALES AND USE TAX APPEALS HEARINGS**

(Contribution Disclosure forms required pursuant to Govt. Code § 15626.)

- C5. Frederik Van Rooyen, 255046, 309259 (EA)
 For Petitioner: Frederik Van Rooyen, Taxpayer
 Kai Mickey, Representative
 For Department: Robert Stipe, Tax Counsel
- C6. Marcella Maria Rosales, 308469 (KH)
 For Petitioner: Marcella Rosales, Taxpayer
 For Department: Carla Caruso, Tax Counsel
- C7. Pratt & Whitney Power Systems, Inc., 272099 (OHB)
 For Refund: Christine L. Hill, Representative
 Suzanne Beaudelaire, Representative
 Chitoor Balakrishna, Representative
 For Department: Randy Ferris, Tax Counsel

D. SPECIAL TAXES APPEALS HEARINGS

(Contribution Disclosure forms required pursuant to Govt. Code § 15626.)

- D1. George Sulaiman Haddad, 240869 (ET)
 For Petitioner: George Haddad, Taxpayer
 Peter Cabiness, Attorney
 For Department: Tim Treichelt, Tax Counsel

E. PROPERTY TAX APPEALS HEARINGS

These items are scheduled for Tuesday, November 21, 2006.

F. PUBLIC HEARINGS

There are no items for this matter.

CHIEF COUNSEL MATTERS

J. Rulemaking

Section 100 Change to Regulations

- J1 *Regulation 1566, Automobile Dealers and Sales Representatives, and Regulation 1655, Returns, Defects and Replacements* Mr. Lambert

The proposed changes are due to the enactment of the Car Buyer's Bill of Rights (Assembly Bill (AB) 68 (Ch. 128, Statutes of 2005), as amended by AB 2303 (Ch. 567, Statutes of 2006) and provide for the application of the Sales and Use Tax Law to contract cancellation option charges and restocking fees for returned vehicles.

- J2 *Regulation 1620, Interstate and Foreign Commerce* Mr. Lambert

The proposed changes are due to the enactment of AB 2239 (Ch. 352, Statutes of 2006), and provide a safe harbor from the imposition of use tax when vehicles are brought into California for the exclusive purpose of warranty or repair service.

Authorization to Publish

- J3 *Request to publish Board of Equalization Rules for Tax Appeals* Mr. Lambert

The *Board of Equalization Rules for Tax Appeals* provides comprehensive guidance regarding the administrative and appellate review processes for all of the tax and fee programs administered by the Board.

- Chapter 1: *Title of Division*
- Chapter 2: *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*
- Chapter 3: *Property Taxes*
- Chapter 4: *Appeals from Actions of the Franchise Tax Board*
- Chapter 5: *General Board Hearing Procedures*

There are no items for the following matters:

- K. Business Taxes
- L. Property Taxes
- M. Other Chief Counsel Matters

ADMINISTRATIVE SESSION

- N. **Consent Agenda** Mr. Evans

N1 Retirement Resolutions

- Robert N. Landes
- Linda A. Mason
- Harold J. Murray
- Mary E. Wargo
- Sheila Wisdom

N2 Approval of Board Meeting Minutes

- June 27, 2006
- July 18, 2006
- August 16, 2006
- August 29, 2006
- September 12-13, 2006
- September 27, 2006

N3 Approval of Report on Effects of Proposition 10 on Cigarette and Tobacco Products Consumption**N4 Approval of Assessors' Handbook Section 531, *Residential Building Costs*****N5 Approval of Assessors' Handbook Section 534, *Rural Building Costs*****N6 Approval of Assessors' Handbook Section 581, *Equipment Index and Percent Good Factors*****N7 Approval of 2007 Timberland Production Zone Values****O. Approval of Board Committee Meeting Minutes**

- O1 Legislative Committee
- O2 Business Taxes Committee

P. Other Administrative Matters**P1 Executive Director's Report.....Mr. Hirsig**
Executive Director's opportunity to report on matters of interest to the Board.

1. Status Report on Feedback of Draft Strategic Plan
2. Discussion of Gov1 Contract for EFT
3. Status of KPMG Diagnostic Review Study and Discussion

P2 Proposed Realignment of the Property and Special.....Mr. Gau
Taxes Department**ANNOUNCEMENT OF CLOSED SESSION..... Mr. Evans****Q. Closed Session**

- Q1. Discussion and approval of staff recommendations regarding settlement cases (Rev. & Tax. Code, §§ 6901, 7093.5, 30459.1 and 50156.11)
- Q2. Pending Litigation: Computer Service Tax Cases - San Francisco County Judicial Council Coordination Proceeding No. 4442; *Mohan v. Dell, Inc. et al.*; *Dell, Inc. et al. v. California State Board of Equalization*; San Francisco County Superior Court Case No. CGC 03 419192; *Nicole Montgomery v. Dell, Inc.*; *Dell Marketing, L.P. & Dell Catalog Sales, L.P. v. California State Board of Equalization* [Los Angeles County Superior Court Case No. BC334881]. (Gov. Code, § 11126(e))

- Q3: Pending Litigation: *Paul E. Ballmer, Karl B. Fisher, aka K. Brent Fisher and Richard Parissi v. Franchise Tax Board and Board of Equalization*, Los Angeles County Superior Court Case No. BC287895 (Gov. Code, § 11126(e))
- Q4: Pending Litigation: *Alex Bates, Patrick Dain, Mark DeVries, Richard Keech, David Penney, and DeMeter Rozsa v. Franchise Tax Board and Board of Equalization*, Los Angeles County Superior Court Case No. BC 287896 (Gov. Code, § 11126(e))
- Q5. Discussion and action on personnel matters (Gov. Code, § 11126(a))

ANNOUNCEMENT OF OPEN SESSION Mr. Evans

ADJOURN - The meeting will reconvene on Tuesday, November 21, 2006, at 9:30 a.m.

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Gary Evans, Acting Chief
Board Proceedings Division

- * Public comment on any agenda item, other than a Closed Session item or an item which has already been considered by a Board Committee, will be accepted at that meeting.
- ** Public comment on any committee agenda item will be accepted at the beginning of the committee meeting.
- "CF" Constitutional Function – The Deputy State Controller may not participate in this matter under Government Code section 7.9.



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BOARD MEETING

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B. CORPORATE FRANCHISE AND PERSONAL INCOME TAX HEARINGS

These items are scheduled for Monday, November 20, 2006.

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These items are scheduled for Monday, November 20, 2006.

D. SPECIAL TAXES APPEALS HEARINGS

These items are scheduled for Monday, November 20, 2006.

E. PROPERTY TAX APPEALS HEARINGS

(Contribution Disclosure forms required pursuant to Govt. Code § 15626.)

Petitions for Reassessment of Unitary Value

- E1.a. GWF Energy, LLC – Henrietta (1123), 359206 – **“CF”**
E1.b. GWF Energy, LLC – Hanford (1122), 359207 – **“CF”**
For Petitioner: Catherine Edwards, Taxpayer
Fred Vance, Representative
For Department: Nancy Vedera, Tax Counsel
- E2. Elk Hills Power, LLC (1126), 359139 – **“CF”**
For Petitioner: James R. Asay, Taxpayer
Fred E. Vance, Representative
Peter W. Michaels, Attorney
For Department: Richard Moon, Tax Counsel
- E3. High Desert Power Trust 2000-A (1127), 359070 – **“CF”**
For Petitioner: Dannie A. Tobias, Representative
For Department: Sam Chon, Tax Counsel
- E4. Qwest Communications Corporation (2463), 359200 – **“CF”**
For Petitioner: George Carr, Taxpayer
Richard Sullivan, Representative
Peter W. Michaels, Attorney
For Department: Mariam Baxley, Tax Counsel
- E5. Sprint PCS (2720), 359330 – **“CF”**
For Petitioner: Michael S. Heaton, Taxpayer
Peter Hladek, Representative
For Department: Dana Flanagan-McBeth, Tax Counsel
- E6.a. Cricket Communications, Inc. (2762), 358157 – **“CF”**
E6.b. Cricket Communications, Inc. (2762), 359136 – **“CF”**
For Petitioner: Peter Hladek, Representative
Amy Haste, Representative
For Department: Denise Riley, Tax Counsel
- E7. Comcast Phone, LLC (7553), 359099 – **“CF”**
For Petitioner: Rich Bell, Taxpayer
For Department: Mariam Baxley, Tax Counsel
- E8. ConocoPhillips Pipe Line Company (480), 359208 – **“CF”**
For Petitioner: Appearance Waived
For Department: Sam Chon, Tax Counsel

ADJOURN

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